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others, climbed upon the springboard, and was standing on its end, about to dive; when through lack of ordinary care on the part of the defendant, a pole supporting high-tension wires over its premises gave way. The wires struck the plaintiffs' intestate and swept him into the river, causing his death. His representatives sued, under a statute, for negligently causing his death. *Held*, that they be allowed to recover. *Hynes v. New York Central R. Co.*, 131 N. E. 898 (N. Y.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 68.

WILLS — PROBATE — LOST AND DESTROYED WILLS. — A statute provided that no will should be probated as a lost or destroyed will unless its existence at the time of the testator's death or its fraudulent destruction during his lifetime was proved. (1916 CAL. CODE CIV. PROC. § 1339.) Testatrix executed and kept in her possession a will, which was not found at her death. It was known to have existed seventy days before her decease, and her declarations during the last days of her life that she believed it then existed, were accepted in evidence. *Held*, that the will be probated as a lost will. *In re Sweetman's Estate*, 195 Pac. 918 (Cal.).

Statutory requirements similar to the one involved are common. See 1907 MONT. REV. CODE, § 7415; 1915 IND. STAT. § 3167; 1920 N. Y. CODE CIV. PROC. § 1865. Unless fraudulent destruction is established, actual existence at the testator's death must be proved. *Estate of Johnson*, 134 Cal. 662, 66 Pac. 847; *Estate of Patterson*, 155 Cal. 626, 102 Pac. 941; *Timon v. Claffy*, 45 Barb. (N. Y.) 438. The proof of such existence varies. Where the will is lost in the hands of a third person, since the testator has had no access to it and no presumption of revocation is raised, the will by presumption continues to exist. *Schultz v. Schultz*, 35 N. Y. 653; *Matter of Cosgrove*, 31 Misc. 422, 65 N. Y. Supp. 570. In the principal case the proof of existence is yet more tenuous. If a will, always in the testator's control, is not found among his papers at death, it is presumed that he destroyed it *animo revocandi*. *Matter of Kennedy*, 167 N. Y. 163, 60 N. E. 442; *Stetson v. Stetson*, 200 Ill. 601, 66 N. E. 262. See 1 JARMAN, WILLS, 6 ed., 152. To rebut this presumption, the testator's declarations are admitted. *In re Steinke's Will*, 95 Wis. 121, 70 N. W. 61; *Miller's Will*, 49 Or. 452, 90 Pac. 1002. See 1 UNDERHILL, LAW OF WILLS, § 277. *Contra*, *In re Colbert's Estate*, 31 Mont. 461, 78 Pac. 971. Then, this presumption being eliminated, by virtue of the presumption of continuing existence, existence at the testator's death is established. See 1916 CAL. CODE CIV. PROC., § 1963, (32). This result is logical, but technical and unsatisfying. Presumptions are apt to shelter rather than combat fraud. To approach a statutory provision, intended to prevent fraud, by so artificial a path of proof, is to fly in the face of its purpose. Far better strip each presumption to its core of reason and let the jury or trial court, weighing these cores as bits of evidence together with other bits of evidence, determine the fact of existence.

WILLS — REVOCATION — REVOCATION BY MARRIAGE. — The testator made a will bequeathing property to his fiancée, whom he married two days later. A statute provided that a marriage shall be deemed a revocation of a previous will. (1917 ILL. REV. STAT., c. 39, § 10.) Evidence was introduced of the fact that the will was made in contemplation of the marriage. *Held*, that the will was revoked. *Wood v. Corbin*, 296 Ill. 129, 129 N. E. 553.

In a case where the will showed on its face that it was made in contemplation of marriage, this court reached the opposite result. *Ford v. Greenawalt*, 292 Ill. 121, 126 N. E. 555. See 34 HARV. L. REV. 95. By the construction there given to the Illinois statute, its operation is like that of statutes expressly